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February 28, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554-0001

Dear Mr. Caton:

We transmit herewith, on behalf of Higher Education Parties, an original and 11 copies of Joint Comments in response to the *Notice of Proposed Rulemaking* in MM Docket No. 95-176, relating to closed captioning of video programming. Also enclosed, for the convenience of the Commission, is a computer diskette containing a copy of the Joint Comments in WordPerfect 6.1 format.

Should any questions arise concerning this matter, kindly contact the undersigned counsel.

Sincerely,

Kenneth D. Salomon/TDG

Kenneth D. Salomon

KDS:LKR

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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OFFICE OF SECRETARY

In the Matter of)	
)	
Closed Captioning and Video Description)	MM Docket No. 95-176
of Video Programming)	
)	
Implementation of Section 305 of the)	
Telecommunications Act of 1996)	
)	
Video Programming Accessibility)	

To: The Commission

JOINT COMMENTS OF HIGHER EDUCATION PARTIES

The American Association of Community Colleges, Community College Satellite Network, American Indian Higher Education Consortium, George Washington University Television, Hispanic Educational Telecommunications System, National Technological University, National University Telecommunications Network, Oklahoma State University, Institute for Telecommunications, Old Dominion University, and the University of New Mexico (collectively, the "Higher Education Parties"), by their attorney, submit these Joint Comments in response to the *Notice of Proposed Rulemaking* in MM Docket No. 95-176, relating to closed captioning of video programming.

The Higher Education Parties

The Higher Education Parties are public or private nonprofit educational institutions or

systems, educational institution consortia, and/or public broadcasters. Each of the Higher Education Parties or their members operate satellite facilities for the delivery of credit and non-credit courses and teleconferences for receipt by other educational institutions, learning centers and employees at their places of employment. These satellite-based facilities and networks operate on a state-wide, regional, or national basis. In some cases, the instructional programming is delivered from the originating institution via its uplink or an uplink licensed to another entity direct to downlinks at end user sites. The satellite transmission may be scrambled or unscrambled. In other cases, the programming may be uplinked to a receiving earth station with last mile connectivity provided by other telecommunications technologies, including ITFS, cable, fiber optics, and the like, to the end user sites.

The NPRM Captioning Proposal

The *NPRM's* captioning proposal responds to Section 713 of the Communications Act, which was added by the Telecommunications Act of 1996. Section 713 mandates that by August 8, 1997 the FCC must adopt rules and implementation schedules for captioning of video programming to ensure access by persons with hearing disabilities. This mandate includes both programming published or exhibited before and after the effective date of the new rules. For programming first published or exhibited prior to the effective date of the new rules, accessibility must “maximized” through closed captions. Programming first published or exhibited after the effective date must be “fully accessible” through closed captions. The FCC may exempt certain programs or classes of programs, or certain providers or owners of video programming, based on a showing that the provision of captioning would be economically or

unduly burdensome.

Satellite Delivered Educational and Instructional Programming Should Be Exempt

The Higher Education Parties are cognizant of the need to make video programming available to persons with hearing impairments and they are in sympathy with the goal of Section 713. Nevertheless, they urge that the FCC create a specific exemption for their satellite programming as a class of programming, and satellite-based educational providers as a class of providers, to the extent that their satellite delivered educational and instructional video programming delivered to schools, higher education institutions, learning centers, employers, and the like might otherwise be included in the FCC's captioning requirements. The Higher Education Parties believe that, if captioning requirements were imposed on their operations, the result would be a direct and devastating reduction in the quantity of such programming currently available to receive sites and their students. The Higher Education Parties also believe that a captioning mandate under Section 713 is not only unnecessary, but also duplicative of existing federal statutory requirements applicable to their programming services and the obligation to make reasonable modifications on a case-by-case basis to accommodate the needs of all otherwise qualified disabled learners, not only hearing impaired learners.

The *NPRM* interprets Section 713 to apply only to video programming delivered electronically to consumers. The Higher Education Parties satellite educational and instructional programming generally is delivered on a point-to-multipoint basis to educational receive sites. This programming normally is only directed at students enrolled in specific telecourses. Such transmissions, therefore, are not delivered generally to "consumers," and thus would not be

included in the FCC's captioning requirements. The Higher Education Parties urge the FCC to confirm this interpretation of the *NPRM*.

Bases for Exemption

The Higher Education Parties' satellite delivered programming as a class of programming, and satellite-based educators as a class of provider, should be exempt for two basic reasons. First, the Higher Education Parties' satellite delivered programming is already subject to the reasonable modification requirements of the Americans With Disability Act of 1990, 42 U.S.C. §§ 12131-12134 (the "ADA") and/or the Rehabilitation Act of 1973, 29 U.S.C. §794 (the "Rehabilitation Act"). Therefore, extending the Section 713 captioning obligation to the programming of the Higher Education Parties would be both redundant and unnecessary. Second, the Higher Education Parties lack the resources to caption all of their programming. A universal captioning requirement, therefore, will result in a substantial reduction in the amount and variety of the programming being offered as limited educational programming dollars are first applied exclusively to that one type of modification. Universal captioning of the Higher Education Parties' programming under Section 713 in lieu of the more focused case-by-case approach of the Rehabilitation Act and the ADA necessarily will be at the expense of accommodations to other students who are otherwise qualified but suffer from non-hearing related disabilities.

The Higher Education Parties refer the Commission to joint comments filed in this proceeding by a number of ITFS licensees. Those joint comments provide details illustrating the costs of captioning and effect of the application of Section 713 on ITFS licensees. The Higher

Education Parties endorse the analysis of the ITFS licensees, and submit that application of Section 713 to their programming will have a similar adverse effect. Therefore, the Higher Education Parties urge the Commission to be mindful that other federal laws already require accommodation of disabilities, including hearing impairments, on a much more individualized, targeted basis. Thus, exemption of the Higher Education Parties satellite-delivered programming generally will not result in the deprivation of service to the disabled.

Under Section 504 of the Rehabilitation Act and implementing regulations of the Department of Education, recipients of federal funding must make a reasonable percentage of all programming accessible to disabled persons. That law permits accessibility for hearing impaired persons to be accomplished through open or closed captioning, subtitling, or signing, and permits administrative and financial costs of such accommodations to be considered in judging how best to meet a particular student's needs.

The ADA requires educational entities to make programming they provide accessible to the disabled unless so doing would fundamentally alter the nature of the program or would create an undue financial or administrative burden. Again, there is no specific requirement that accessibility for the hearing impaired be accomplished through closed captioning, and these matters are evaluated in the context of the needs of specific persons with disabilities.

Conclusion

For the foregoing reasons, the Higher Education Parties urge the FCC to exempt their satellite delivered educational and instructional programming as a class of programming, and satellite-based public and nonprofit educational and training providers as a class of provider,

from the captioning requirements to be adopted in this proceeding.

Respectfully submitted,

American Association of Community Colleges,
Community College Satellite Network

American Indian Higher Education Consortium

George Washington University Television

Hispanic Educational Telecommunications System

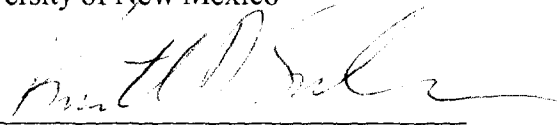
National Technological University

National University Telecommunications Network

Oklahoma State University, Institute for
Telecommunications

Old Dominion University

University of New Mexico

By: 

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Their Attorney

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